

MITCHELL



INTRODUCTORY LECTURE

1867

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# INTRODUCTORY LECTURE

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HON. J. H. MITCHELL,

PROFESSOR OF MEDICAL JURISPRUDENCE.

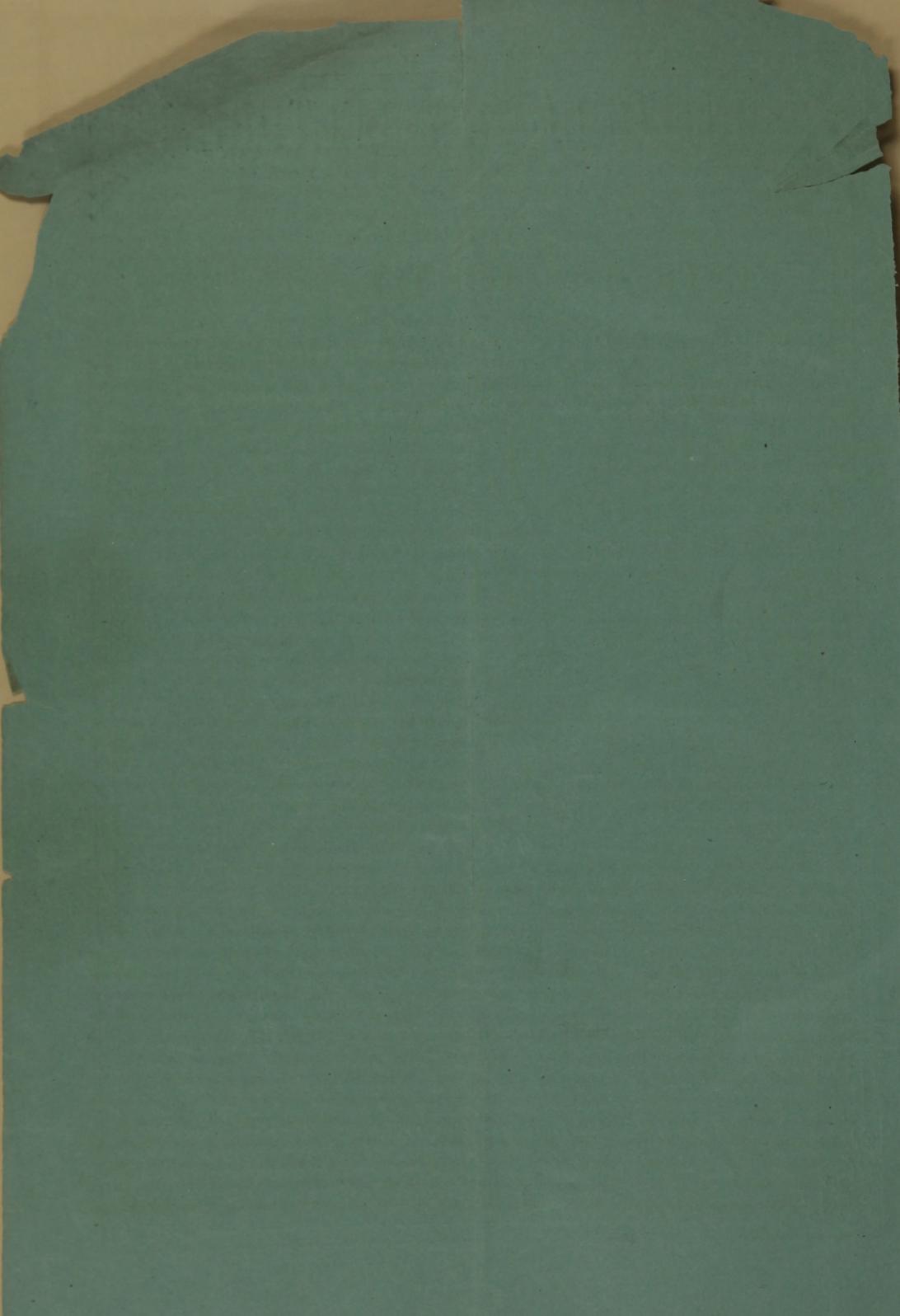
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# INTRODUCTORY LECTURE

## Correspondence.

SALEM, Ogn., June 19, 1867.

PROF. MITCHELL—*Dear Sir:* We, a committee appointed in behalf of the class in attendance upon the present course of Medical Lectures of Willamette University, would respectfully request a copy of your late Introductory Address for publication.

Very respectfully,

M. B. LINGO, M. D.,

W. A. CUSICK,

J. L. MARTIN,

Committee.

SALEM, Ogn., June 20, 1867.

M. B. LINGO, M. D., W. A. CUSICK AND J. L. MARTIN—*Gentlemen:* Your note of the 19th inst., in behalf of the class of medical students of Willamette University, requesting for publication a copy of my Introductory Lecture, delivered before that department, preparatory to a course of lectures on Medical Jurisprudence, is received. This compliment is quite unexpected and gratefully appreciated. Had I supposed the lecture would ever find its way to the press, I should have given more special attention to its preparation. I cheerfully comply, however, with your request, and herewith place at your disposal the manuscript.

I am, very truly, your ob't serv't,

J. H. MITCHELL.

## Introductory—"Medical Mal-praxis."

*Gentlemen, students of the Medical Department of the Willamette University:* The instruction that you have already received from the various lectures to which you have listened, and the progress you have made in the various sciences connected with the honorable profession to which you aspire, have doubtless, ere this, impressed upon your minds the important fact that that person whose business it is to deal with the physical infirmities of man—with the diseases and accidents incident to the human race—occupies a position in life of great responsibility. You have doubtless long since conceived a just appreciation of the great importance, and, I might say, the almost imperative necessity, of understanding completely, in outline and detail, a profession which makes you, in one sense, the

conservators and guardians of the health and even the life of the citizen. The knowledge you have already acquired of the delicate, and, I may say, mysterious organism of the human frame—of the numerous and finely wrought component parts of that organism—of the relation these bear the one to the other and each to all;—the varied and almost innumerable diseases and accidents to which each individual part of this complicated machine we call man is liable, and the no less numerous tests by which we are able to diagnose or determine these with scientific skill and almost complete certainty, together with the still greater number of remedies with which you are to deal, from which you are to select, and by which you are to alleviate, heal and finally cure, must have convinced you, as reasonable, intelligent men, aspiring to a proficiency in your profession, and to a creditable and honorable position among your fellow members, that without careful, persevering, earnest effort, with a life regulated by strictly temperate habits, you never, no, never can be permitted to realize the fruits of your aspirations. And having been entrusted with the responsible duty of attempting your instruction in one department connected with your profession, and which is of most vital importance to you—a position, by the way, which I accept with fear and trembling, and a just appreciation of the magnitude of the responsibility it imposes—the very first *idea* that I would desire to have impressed upon your minds, if such is not already the case, is the vast importance of setting your mark high at the very outset, and then of working with an indefatigable will and unwavering purpose until that mark is reached. And I will here state that it is just as easy, all things considered, to be a proficient in any business or profession as to be a bungler or a quack, and infinitely more respectable in the eyes of the community and gratifying to *one's* self. And I will here venture the conviction, which fully impresses itself upon my mind, that he who, without first making himself thorough-

ly acquainted with his profession in all its diversified departments and intricate channels, undertakes to set himself up as a doctor of medicine, and thus tampers with that he does not understand, and which affects the property, health, liberty and even lives of individuals, is no less dangerous to community, nor yet less morally criminal, than is the secret and murderous highwayman, whose pathway is stained with the blood of his innocent victims. I know there are very many that we recognize as good men, of fair and not unfrequently superior ability, engaged in the practice of medicine, that have never been inside a lecture room or spanned a scalpel, and who have about as much theoretical or practical knowledge of the anatomical structure of the human frame, and of the nature of the diseases to which it is liable, as I have of the thoughts that are at this moment pressing through the mind of the Emperor Napoleon. They are doubtless, many of them, morally good and well meaning men, *desiring* that which is right, and even *doing* that which is right according to the knowledge they possess; but then the great fact is apparent that they are engaged in a profession that, most emphatically above all other professions known among men, requires skill and science as essential to a proper discharge of its duties. And in your profession, as in all others, but especially in the practice of medicine, is it true, that a complete understanding of *all* its different branches and departments is almost absolutely essential to a correct understanding of any *one*. And what President Wytbe told you in one of his earliest lectures on the eye—that a man to be a good eye doctor must understand anatomy, surgery, pathology and the practice of medicine—is a fact no less important to be observed than it is true. Nor is the illustration to be confined alone to that particular department of the profession. All its different branches are so intimately connected and interwoven together, and so dependent in their sympathies one upon the other are the different parts of the human system that a complete knowledge of any one presupposes a like knowledge of all the rest; and this is a principle that holds good in all professions. You frequently hear it said that a certain lawyer is a good chancellor, another is a good criminal lawyer, a third is a real estate lawyer, while a fourth is said to excel as an advocate; and not unfrequently is it the case that we find men in that profession devoting their attention almost exclusively to one or the other of these branches of legal jurisprudence, and what is yet true, excelling

in them; but then the important fact is no less true, that in order to excel in any of these branches or departments of the profession, the lawyer must have the capital stock wherewith to operate, and that capital is a thorough knowledge and proficiency in the various branches and departments extending through the entire area of legal jurisprudence. And that lawyer is no better prepared to properly defend the prisoner at the bar, charged with crime, without this *general* knowledge, than is the physician qualified to treat for a disease of the eye without understanding the anatomical structure of the human frame, the diseases to which it is subject, the means of discovering them, and the proper remedies to be applied in each individual case.

It is a rule in mathematics that the greater area or circle always includes the less, but the less the greater never. So in any profession, and especially in that one to which you are now giving your attention. It is made up of numerous sections or parts, true, each to some extent complete in itself, but which, mortised and dovetailed together, form one perfect whole, and a proper knowledge of *that* necessarily includes at least an *equal* knowledge of all its sections or parts. While without such enlarged comprehension of the whole subject, your professional vision must, as a necessary consequence, be obscured, your way dark, while your progress will be attended with lack of confidence upon your part as well as upon the part of those who employ you; and although you may struggle manfully and work faithfully, your best efforts will be enveloped in the mists of uncertainty and doubt. And of all the various branches of your profession none perhaps is more interesting to investigate, and at the same time carries with it greater safeguards to fortify and protect you against responsibility, legal and moral, while pursuing the line of your profession, than that of "*Medical Jurisprudence*."

And that man who undertakes to stand up as a medical expert in a court of justice, where mighty interests, involving not only property, but the liberty, honor, integrity and life of the citizen, are concerned, without a thorough knowledge of his subject, is not only a dangerous, polluting leper, lying close at the very heart of the jurisprudence, legal and medical, of our land, corroding and corrupting it, but he is in my humble judgment a guilty criminal himself in the eyes of God, and should be so recognized and dealt with by the laws of man.

It is a deplorable sight, and criminal enough in all conscience, for an M. D. in name simply, without the merit of that professional knowledge necessary to a proper discharge of his duties, to stand between life and death at the bedside of sickness and distress, as the sole earthly hope of the pallid sufferer, but it is infinitely worse for such a man to take his position in a court of justice, where the issues are not unfrequently not only honorable life upon the one hand and ignominious judicial death upon the other, but guilt and innocence, horror and dishonor, purity of blood and descent, and hereditary shame, confusion and disgrace, and constitute himself the expert upon whose testimony perchance these momentous issues are to be determined. Let the student, then, upon whose knowledge and skill in his profession so much depends, upon whom may rest in after years, in the course of your professional life, the grave responsibility of standing as the arbiter between innocence and guilt, and life and death, approach that profession with sober intentions, and a realizing sense of the responsible vocation that he is about to assume. And comprehending this matter at the very beginning, as I trust and feel that you will, you will each and all form the fixed determination in your minds to spare no time, means, energy, study, or anything else that will enable you to become masters of your profession in all its various branches and intricate, mysterious departments. This much is due yourselves as intelligent, honorable gentlemen. It is due your friends and teachers. It is due this Faculty and this Institution. It is due the profession in which you aspire worthily to become respectable and honored members. It is due the arts and sciences in which you deal. And above all these, it is due to mankind, whose misfortunes of disease, accident, folly and crime shall all make up the capital stock, the materials upon which you shall operate, through which you shall live, and from which you shall either carve out a reputation of usefulness, honor and distinction, or of worthlessness, dishonor and contempt.

The time has been, and to too great an extent is it still true, when quacks and upstarts in all the professions have brought odium and disgrace, not only upon themselves, but the professions to which they have belonged—or rather with which they have sought to act. That time of day, however, is fast passing away—a new era is dawning—the masses are becoming intelligent. The school house and the college have given the mind of the body politic, as well as the individual mind, a new im-

petus in the right direction. The far reaching rays of science have dispelled the darkness of the past, and are now penetrating the distant future and lighting up the way of humanity; and the time soon will be when that man who, in the face of this blazing sun of science, undertakes to play doctor without first thoroughly preparing himself for the high vocation, will not only fail to make his daily bread, but he will be shunned by the community with the same instinctive dread with which the individual recoils from a poisonous adder or a deadly scorpion.

Ignorance is the stock in trade upon which the various humbugs and isms of the day operate; and just in proportion as you keep the masses ignorant, in that degree are they liable to be imposed upon by pretentious charlatans and ignorant quacks. Subdue ignorance, however, enlighten the masses, and just in the same ratio will conceited empiricism lose its grasp and fail in the accomplishment of its purpose; and toward that time of day, in the history of this country, do I understand the dial of time to be rapidly advancing. And I have thought proper in this, my introductory lecture, to throw out these desultory observations, hoping, as I do, that they may prove beneficial in operating to some extent upon your minds as a stimulus, to cause you to press forward with unabating vigor, until you can boldly and fearlessly cross professional swords with the ablest of your compeers in the profession, without the mortification of defeat or the slightest fear of your ability to cope. And I know there is nothing that could give this Faculty greater pleasure than to see this class of students—the first upon the rolls of this institution—coming forth from this hall, not alone with the titular dignities in your pockets, but with the more worthy and enduring diploma of science, art, skill and full professional knowledge written upon your memories and chiselled upon your minds.

And, now, having said thus much, by way of introduction, I will permit me to state further that, in what I shall say to you in the present course of lectures, I shall endeavor to be plain, practical and comprehensive as I may. As *my* exclusive purpose is to teach, and as *yours*, without any doubt, is to learn, let us try and understand each other at the start; and should I appear plain and simple in my illustrations and manner of presenting subjects—which shall be my aim—you must excuse the lack of flourish, as, in my judgment, the more plain and practical we are in teaching, the more good we will be likely to accomplish. My object, as I have said, shall be to instruct the class so far as my

knowledge and ability extends, and not to attempt an ostentatious parade of what little I may know myself. And should I at any time advance theories or present practical illustrations at variance with the views of any of the members of the Faculty, I shall not only consider it a kindness to me, but an act of justice to themselves and to you, to state wherein they differ, and in this way we shall endeavor to get the truth before you.

Medical Jurisprudence, in its technical signification, means: "That science which applies the principles and practice of the different branches of medicine to doubtful questions in courts of justice." The mere announcement, therefore, of the definition of the terms "*Medical Jurisprudence*," opens out before us a scientific field of vast extent and almost limitless proportions, through and over which we may proceed in our explorations without being wearied by the sameness of the scenery, or cramped for room or materials for investigation. It is a science which, to be even *tolerably* well understood, requires months and years of careful investigation, and patient, methodical study; and he who becomes a master in it, *must* be a good *lawyer* and *will* not lack much of being a good *physician* and *surgeon*.

The multiplied diversity of the subjects included in this separate branch of your profession, and all equally interesting and instructive as they are, renders it wholly impossible for me, in the brief space which I am able to devote during the present course to touch even upon a moiety. But, as in all departments of education, so in this—there must be a commencement somewhere, and as in many others, so also in this—it makes but very little difference which particular subject or branch of this science we first investigate. It is a science composed, so to speak, of very many little wheels or circles, all, to a very great extent, complete in themselves, but forming, when taken all together, a complete and perfect *science of principles*. When I commenced the study of law, I inquired of my preceptor what book of Blackstone's Commentaries I should read first. His answer was—and he was an eminent lawyer—"It is wholly immaterial whether you commence with the first, second, third, or fourth book. The law," said he, further, "as elucidated by Mr. Blackstone in his four books, is a *perfect science of principles*. Each book, and in fact each subject," said he, "is complete in itself; and while, to be a good lawyer, it is indispensable that you should study and understand all, it is quite immaterial where you commence." So *here*

it is of no special importance what particular subject we first take up—whether it be insanity in any of its multifarious branches, pregnancy, rape, foeticide, infanticide, impotency, poisons, wounds, medical malpractice, or what not, provided we get a correct idea of that particular branch of the science that our present time and opportunity will permit us to investigate, trusting, as we shall, to future time and opportunity to enable us to master the science in all its departments, however intricate it may be or however much it may draw upon our time and attention or weary our patience.

Hence, in the remaining portion of the present lecture, I shall present briefly a few considerations bearing upon the question of your own responsibility, civil and criminal, as physicians and surgeons, for what is, termed in Medical Jurisprudence *medical malpractice*. And I will here state that the law governing in these cases of medical practice, is quite different from what it would be, were it left to me to establish and determine. What I mean is this: That in our State—as well as in many of the States of this Union—there is no standard fixed by law to which a person shall attain before he shall be permitted to act in the capacity of physician or surgeon. No routine of study enjoined; no literary or scientific qualifications essential; no license or diploma from any competent source demanded; no condition imposed; no qualification required; nothing whatever in the shape of legal prohibition, to check you or me, except our own conscience, from, at any time, whether we be actually qualified or not, engaging in the practice of this profession; and, again, nothing to prevent us from getting patients, except, perhaps, it be the educated intelligence of the community in which we might happen to locate. This is the law as it exists to-day, and under this rule must the civil and criminal liability of the *real* physician and the ignorant empiric, for malpractice be determined. In some countries, however, and in former periods, the rule has been carried to the extreme in the other direction. In England, about two hundred years ago, the distinction between the regular and irregular practitioner was clearly and distinctly understood and recognized by the laws of that day. And to such an extent did this distinction govern, in defining and determining the liability of each, that if a person died, manifestly from improper treatment, if that treatment proceeded from a regularly licensed physician, it was adjudged and held to be misadventure or excusable accident; whereas, in the case of a like occurrence from the treatment of an unlicensed

or irregular practitioner, he was held to be guilty of at least manslaughter, and in peculiarly aggravated cases, murder. This doctrine, however, of determining the question as to the liability of a practitioner, upon the solitary fact of his being a regular or irregular physician or surgeon, was, in the days of that learned jurist, Lord Hale, for the first time seriously questioned; and to the extent that the doctrine had then been carried almost all eminent jurists since that time have concurred in, saying it was very properly questioned, and from that day to the present the great weight of authority, both in England and America, is to the effect that no such distinction exists. And as long as there is no check in the law prohibiting men, under proper penalties, from intruding themselves into the profession without proper qualification, it is quite impossible that any such distinction should exist.

There being no distinction then in the eye of the law, as it exists to-day, *in one sense*, that is, *so far as the right to practice is concerned*, between the regular and irregular practitioner, let us look for a moment at the rules under which the liability of all is to be determined. And just at this point I would attract your attention to this consideration, which courts have very properly not failed to observe in giving shape and sanction to the law applicable in cases of malpractice, and that is, that there are in existence in this, as well as in all other countries, various systems or schools of practice. First—We have the allopathic, which, in its original technical sense, as I understand it, is “that system of curing diseases by the production of a condition of the system, either different from, opposite to, or incompatible with that condition essential to the existence of the disease to be cured.” Then we have the homeopathic system, which is the doctrine of curing diseases with very minute doses of medicine—which, in common ironical parlance, are called “little pills” and which are supposed to produce in the patient affections similar to those of the disease. Then there is the hydropathic system, which seeks to cure by the copious and frequent use of pure water externally and internally.

There are also many others. True, they may be false, and very many of them are so characterized by men of ability and learning, whose opinions are entitled to respect and weight; but then they *are all* recognized by the courts. I do not mean by this that they are all recognized by the courts as being *correct*, because this would be an absurdity;

but what I desire to be understood as saying, and what I do say, is this: that the law has not prescribed any particular system as the true one, or the one that shall be followed by practitioners; and therefore courts, in their administration of justice, recognize the *fact* that all these various systems are in *existence*, that they are all being practiced, and that they *all*, to a greater or less extent, have their adherents, as well among the masses of the people as the professional community.

Then, again, there are in existence, and in practice even by highly educated practitioners holding to the same general system of practice, different methods of treatment in similar cases in the surgical department of the profession.

When, therefore, a practitioner of medicine or surgery is brought into a court of justice upon a charge of “*medical malpractice*,” all these questions, as to the various systems of practice and modes of treatment may, in connection with many others, very properly be considered in determining the *question*, as also the *extent* of his liability.

The first question then to be considered, when a practitioner is sued for damages in a civil court, for medical malpractice, is, what particular system of practice does he adhere to? How did he hold himself out to the community? Who, and what manner of man, did he represent himself to be? This being determined, the next inquiry is, did he exercise *ordinary care*? and did he bring to bear upon the case *ordinary skill*? He is not to be held accountable for the *highest* degree of skill, or for *extraordinary care*. The law has, in its wisdom, made a suitable allowance for the short-comings and imperfections of poor, imperfect humanity. The law, as well as common sense, alike, with the past history of man, teach and recognize the great fact that there is a difference in the minds and capabilities of men. Even as “one star differeth from another star in glory,” so do the intellects of men differ in their susceptibilities and powers. And because you or I, for lack of that superior genius possessed by others, may fail to command the *highest* skill known to our profession, is no reason that we should—if we have *ordinary skill* and have acted in *good faith*, with reasonable, ordinary care—be mulcted in damages. The law countenances no such absurdity as this. While it throws its arm of protection, so far as it may, around the community to protect them from the *mala fides* of presumptuous empiricism, it at the same time entertains a high regard for so honorable a profession as that to which you aspire. And its meritorious members, so long as

they are found acting with ordinary skill, in good faith, and with reasonable care, will ever find full and complete protection, and vindication without stint beneath its ample and protecting folds.

As the law, therefore, prescribes no particular system, every physician is expected to practice according to that system which he professes, and in which he avows himself to the community to be competent. It is competent, therefore, for a physician, charged with malpractice, to show that his treatment of the case was in accordance with the system he professed, and which it was known he followed; provided he adheres to any one of the different systems of practice that are generally known and recognized by the scientific world, and not to some new, fanciful, and perhaps dangerous theory, of recent origin, and which is not known to the world or understood, or recognized by men of science. And if he can show this, and it appears that he has exercised ordinary care, he is not liable; and it would be no answer, nor would it be permitted by a court, for the plaintiff in the action to prove that the treatment of the case was in direct conflict with that prescribed by some other school of physicians, which it is admitted the defendant never recognized or professed to follow. For instance: You hold, we will say for the illustration, to the system of allopathy. You are called to see a patient laboring under a severe attack of fever. You immediately prescribe those remedies and that general course of treatment which, in your judgment, and which, according to your theory of allopathic treatment, will produce in the system of your patient a condition incompatible with that condition essential to the existence of the particular fever. At all events, you follow the rule of your books. You have proceeded, in all respects, in accordance with the school of practice to which you belong, and which you profess to understand. But, still, for some reason, the fever rapidly grows, gradually increases in its malignancy, and, in a brief space of time, your patient suddenly dies. The father of the deceased immediately commences a civil prosecution against you, for the purpose of recovering damages for the loss of services, comfort, society, &c., which he has sustained by reason of his child's death. He charges, in his complaint, that such death was the result of a course of treatment that was radically wrong; and, in support of this allegation, he calls upon the witness stand a homeopathist. And, in answer to the question, as to whether your treatment was proper for such a fever, he answers at once that it was not.

And if asked why it was not, he will answer that, to attempt to produce such a condition of the human system as is wholly incompatible with the existence of the fever, is a piece of sheer folly; that it is an idea long since exploded, and one that no regular scientific practitioner will entertain for a moment. And if asked further what the treatment of the case should have been, he will proceed, doubtless, to say that "*like kills like*," and that a course of treatment just the reverse of that pursued by you *should* have been prescribed, which would have tended to produce in the patient affections similar to those of the fever.

Now, you can see at a glance, that it would be a most dangerous principle in legal jurisprudence that would allow you to be condemned upon a species of evidence such as this. And it would be an egregious error in any court that would charge a jury in such a case that, if they believed from all the testimony that your treatment was all wrong, and that it should have been according to the other system, that they should then find for the plaintiff. Upon the contrary, the charge in such a case unquestionably should be, in substance and effect, this: What system of practice did the defendant adhere to? Is that system one among the many that is recognized by the scientific world? Was the treatment in accordance with that system? and did he exercise ordinary care? If so, the verdict should be for the defendant, although the jury might be fully convinced that death, in this particular case, was the result of the treatment.

In determining the question, however, as to what is *ordinary skill*, courts will take into consideration the advanced state of the profession, in the particular system brought in question, at the time of the alleged malpractice, as it is very manifest that what would amount to *ordinary skill* in almost any science or profession a century ago would fall very far short of coming up to that standard at the present day. While it is true, therefore, that the law draws no distinction in this State between the regular and irregular practitioner—between the ignorant charlatan and the thoroughly educated physician—by saying that the one *may* engage in practice and the other *shall not*, still, when a man sets himself up as a practitioner in any system of practice, and advertises, and holds himself out to the community and the world, as a person competent to deal with the physical accidents and infirmities of the race, he must, when occasion requires his services, and he voluntarily undertakes the case, be able to bring to his aid at least ordinary

skill in the particular system in which he attempts to practice. Otherwise, if injury follows, he is guilty of medical malpractice, and he must suffer the consequences. I mean civilly, by responding in damages to such an amount as a jury may estimate the injury sustained—even although that be to the value of an arm, a leg, an eye, or even life itself.

The plaintiff, in an action against a practitioner for malpractice, must be able to prove—because the *onus* of proof in such cases is always upon the plaintiff—that the defendant has set aside the established principles, and neglected to employ means which are, by medical writers and qualified practitioners, universally held to be necessary in the particular case under consideration, or that he has employed means in the treatment of the case which are, by competent medical writers and practitioners, universally held to be improper and dangerous. This is a rule, however, as I have already stated, that must be considered with reference to the particular system which he professes to follow. For the law has, through judicial sanction, very wisely established the doctrine that, if a man employs, for instance, an homeopathist, knowing him to be such, and he is injured through malpractice, he will not be permitted to show, as a foundation for damages, that the treatment was not in accordance with the universally established treatment in a like case of the allopathists, or *any* other, or in fact *all* other systems, and *vice versa*.

But the same degree of want of skill and reasonable care which will subject a practitioner to a civil liability for damages, will not subject him to an indictment for a felony or a misdemeanor. The law in this regard is tenderly careful of the profession, and it requires a case showing, not only a want of ordinary skill and reasonable care, but of either gross ignorance or gross negligence. And in this respect, also, has the Jurisprudence of this country and England undergone a radical change since the times of Lord Coke, whose Institutes were written over two hundred years ago. During his day, the records of the English criminal courts show at least quite numerous instances of practitioners having been, for malpractice, condemned and executed for manslaughter—manslaughter, at that day in England, being a capital offence. The law, however, as I have already intimated, of the present day in the United States—except in certain States where it is regulated by statute (and it is also the same in England)—is this: That, in order to subject a practitioner to a criminal prosecution

for malpractice, it must be made to appear, either that he was grossly ignorant, or, that not being so grossly ignorant, he was guilty of gross negligence. And I will here state that this general doctrine of the common law has been incorporated into the criminal code of Oregon. Section 507 of the code of Criminal Procedure, page 528 of the General Laws of Oregon, as compiled and annotated by Judge M. P. Deady, provides as follows:

"If any person shall, in the commission of an unlawful act, or a *lawful* act, without due caution or circumspection, involuntarily kill another, such person shall be deemed guilty of manslaughter."

Again: Section 519, on page 530, of the same code, reads as follows:

"The killing of a human being is excusable when committed—

"1st. By accident or misfortune, in lawfully correcting a child or servant, or in doing any other *lawful* act by lawful means, with usual and ordinary caution, and without any unlawful intent."

And again, section 510 of same provides that—

"If any physician, while in a state of intoxication, shall, without a design to effect death, administer any poison, drug, or medicine, or do any other act to another person which shall produce the death of such other, such physician shall be deemed guilty of manslaughter."

These wholesome statutory provisions are, however, in the main, merely declaratory of what the law had long since become by the many uniform decisions from the judicial bench.

If, therefore, a person is employed to act in a given case, either as a physician or surgeon—whether he be a regular practitioner or not—if he acts honestly and soberly, uses his best skill to cure, is not grossly ignorant, or has not been guilty of gross negligence, he is not criminally responsible, no matter what the result of the treatment may be. You will perceive, therefore, that, while damages may be recovered against a practitioner for mere want of medical skill, he cannot, for the same reason, be held criminally liable in a prosecution. And even under the English laws of three centuries ago, which recognized the distinction between the regular and irregular practitioner, and which prohibited a person from practicing without a prescribed diploma, while a person thus prohibited might be subjected to a penalty in a *quasi* criminal prosecution, he was not answerable criminally for murder or manslaughter *on that account alone*.

A practitioner, however, at the present day—whether he be regularly educated or not—may be criminally liable for *malpractice*; but whether he is or not, in any given case, must depend entirely

upon the questions, as to whether he acted under the influence of intoxicating liquors, was grossly ignorant of the case, or acted in a grossly negligent manner, with careless indifference and inattention to, and manifest disregard of human life. A physician may do the very act which results directly in the death of the patient; but still the law, in its charity for the imperfections of man, even in his highest and best sphere of science and skill, and in its commendable regard for the protection of a profession that has cast its untold benefits to the human race broadcast throughout the length and breadth of the habitable globe, will not adjudge such a man a criminal, unless it appears that he was so grossly ignorant, or acted with such manifest disregard of human life as to raise the implication of what is known as legal malice. For, from such gross ignorance, intoxication, or want of care, the law ever has implied, and justly too, and I trust ever will imply, malice, and hold the party thus in default answerable, as a dangerous enemy to human life, and a criminal deserving of condemnation, equally with that despicable misanthrope or careless ruffian who, regardless of consequences, with universal hate burning in his bosom, or heart benumbed with cold indifference to the rights of life and limb, fires a gun into the crowded street or throws a deadly missile from the tower's top upon the sea of humanity beneath.

Let me suggest, then, the propriety, as well as the great necessity, of thoroughly acquainting yourselves with the true relation you will sustain to society, when you shall enter upon your field of practice. Strive to understand well your duties and your grave responsibilities. If you do not, then each step you take is a step in the dark—over a pathway dotted with pitfalls innumerable, of civil and criminal responsibility, and into these, sooner or later, you will surely fall—a legitimate victim to your want of professional knowledge.

Your profession is one that has come down through the past ages of the world, leaving in its

train a silvery stream of light that has shed its healing rays upon the human race; a profession that has assailed, modified, and even conquered many of the "thousand natural shocks that flesh is heir to." How many of the most dangerous of contagious diseases known to the whole catalogue are to-day held spell-bound and harmless in the hands of victorious medical science. And how many others, that once devastated earth with their pitiless hail of death, are to-day shorn of their malignant power, and now only remain as harmless serpents, whose fangs have been drawn, and whose poisons have lost their power to infect. Second, therefore, to none, in character and importance—except that one which deals with our spiritual infirmities—stands the medical profession. It has engaged the life-services of many of the most eminent scientific men that have ever lived. And, to aspire to a high rank in that profession, is to aspire to one among the most honorable positions that man can claim or earth can give. And when you have attained to such a position in your profession, you will have reached an eminence that will enable you to survey, at a glance, the entire field of duty and responsibility. You will then, like the skillful mariner that stands at the helm of his vessel, guiding and directing her free from the rocks and shoals, be enabled to direct your professional bark across the rough waves of active life, in such a manner as to ensure your safety against the rocks and quicksands of both civil and criminal responsibility.

Let me say, then, in conclusion, that the only safe means to be adopted by the medical practitioner, as a security against personal liability, is to educate himself thoroughly in every department connected with his profession. Be temperate in your habits, and proceed, in every practical step of your profession, with care and caution; and I venture the prediction that you will never have the humiliation of being prosecuted even, much less of being compelled to pay damages on account of medical malpractice.

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Introductory Lecture. Mitchell, J. H.  
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